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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 534

ESTATE OF HENRY W. PUTNAM; GUARANTY TRUST COMPANY OF NEW YORK, EXECUTOR,
Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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Of Counsel.

September 30, 1944.

SUBJECT INDEX

CASES CITED

STATUTES CITED

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Guaranty Trust Company of New York, a New York Trust Company, as Executor of the Estate of Henry W. Putnam, deceased, respectfully prays that a writ of certiorari issue to review an order, judgment and decree of the United States Circuit Court of Appeals for the Second Circuit, entered August 25, 1944, reversing and remanding with directions the orders of the Board of Tax Appeals entered on November 5, 1941, and November 27, 1941. A certified transcript of the record is furnished herewith in accordance with Rule 38, Par. 1, of the Rules of this Court.

STATEMENT

Henry W. Putnam died on March 30, 1938, owning, among other investments, shares in

> General Motors Corporation and United Profit Sharing Corporation, both Delaware corporations;
>
> American Can Company, American Smelting & Refining Company and Hecker Products Corporation, all New Jersey corporations;
>
> Westinghouse Air-Brake Manufacturing Company and Philadelphia Company, both Pennsylvania corporations; and
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> United States Smelting, Refining & Mining Company, a Maine corporation.

All of these corporations had made dividend declarations prior to the date of his death. In every case, however, the dividend was to be paid only to holders of record on designated dates, all of which dates were subsequent to the date of his death (in one case, six months later). In every case also the payment date was to be subsequent to the record date, generally one month subsequent to the record date.

On the date of death, therefore, the decedent had no right to receive the dividend.

The Commissioner assessed income tax on the dividends both to the decedent and to his Executor, so as to insure collection of income tax either as of the date of declaration or as of the record date. The Executor recognized the obligation of the Estate to pay the tax, as the Estate still held the shares in question on the record date. It disputed,

however, the power of the Commissioner to impute the same income to the decedent during his lifetime.

The Commissioner's doubt was evidently whether § 42 of the Revenue Act of 1938, 52 Stat. 447, applied, the relevant provision being that

> "* * * In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period."

The taxpayer's position was that income could not be said to have accrued prior to death, for the dividends had not been declared payable to the decedent, but only to such stockholders as should be on the books on a subsequent date. A dividend declared payable to holders on a subsequent record date confers no rights upon present holders, and hence could not constitute income to such holders under Section 22(a) of said Revenue Act.

The Tax Court,[1] considering itself bound by the 4th Circuit Court of Appeals' decision in *Helvering* v. *McGlue's Estate,* 119 F. (2d) 167 to apply the law of the State of incorporation as to the date upon which a dividend became "a debt", upheld the assessment to the decedent in the cases of the New Jersey corporations and the assessment to the Estate in the cases of the Delaware, Pennsylvania, and Maine corporations.[2]

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[1]The case was heard and decided while the Tax Court was still known as the Board of Tax Appeals.

[2]In its own decision in *McGlue's Estate,* 41 B. T. A. 1186, the Tax Court had evidently assumed that the question of the date of accrual for income tax purpose of a corporate dividend called for a uniform Federal rule. In this it was reversed by the 4th

The decedent's income for the portion of the year 1938 prior to the death was in higher brackets than the Estate's income for the balance of the year,[3] and accordingly there followed cross-appeals to the 2d Circuit Court of Appeals.

The majority of the 2d Circuit Court of Appeals (Swan and Chase, *JJ.*) held (1) that the case called for the application of a uniform Federal rule, and (2) that the rule should be that a dividend accrues for the purposes of § 42 as soon as declared, notwithstanding (a) that the declaration is only to stockholders of record on a date subsequent to the date of death, (b) that a contrary rule (that the record date is determinative) applies in most, if not all, of the States, and (c) that the contrary rule (making the payment date determinative) would also apply for Federal Income Tax purposes in all other cases of taxpayers, those on an accrual as well as those on a cash basis, as had been expressly held by the 3d Circuit Court of Appeals in *Tar Products Corporation* v. *Commissioner*, 130 F. (2d) 866.

Judge Learned Hand dissented. He agreed that the case called for the application of a uniform Federal rule, but he pointed out that the record date must be determinative, for indeed at the date of death in this case it was still undetermined whether the decedent would have received income at all.

Inasmuch as decision of this case necessarily requires decision as to when the dividend was made under Section 115 of the Revenue Act of 1938, there is a direct conflict

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Circuit Court of Appeals,—erroneously (as both the majority and dissenting Judges of the Court below, and both the Commissioner and we ourselves, all agree; *cf. Lyeth* v. *Hoey*, 305 U. S. 188).

[3]This was because the Estate distributed substantially all of its income, which thus became taxable to the various distributees

between the decision of the Court below and the decision of the 3d Circuit Court of Appeals in *Tar Products Corporation* v. *Commissioner*, 130 F. (2d) 866.

And we further submit that the case may fairly be recognized as one of fundamental importance, in that it brings before this Court the practice as to dividends that is now almost universally followed by corporations whose shares are publicly held.

JURISDICTION

Jurisdiction of this Court is invoked under Judicial Code, § 240-(a), as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C. § 348-(a)). The date of the order, judgment and decree of the Circuit Court of Appeals for the Second Circuit to be reviewed was August 25, 1944.

QUESTION PRESENTED

Whether under the Revenue Act of 1938 a corporate dividend upon shares owned by a decedent, which was declared payable to holders of record on a date subsequent to his death, should be treated as income accrued to him during his lifetime or as income accrued to the shareholder who was of record on the record and payment dates.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

1. The Circuit Court of Appeals has rendered a decision in conflict with a decision of the Third Circuit Court of Appeals on the same matter, viz., the date upon which a corporate dividend is to be taken to have been made for the purpose of Federal Income Tax Law. *Tar Products Corporation* v. *Commissioner*, 130 F. (2d) 866.

2. The Circuit Court of Appeals has decided an important question of Federal law which has not been, but should be, settled by this Court, in that it has determined the date upon which a corporate dividend, of the type in current universal use by large corporations whose shares are publicly held, is to be deemed to have accrued for the purpose of Federal Income Tax Law.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Judicial Circuit, sitting at New York, New York, commanding said Court to certify and send up to this Court, on a date to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court; that the order, judgment and decree of the Circuit Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may seem proper.

GUARANTY TRUST COMPANY OF NEW YORK,
as Executor of the Estate of Henry W. Putnam, Petitioner,

by WM. DWIGHT WHITNEY,
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ROBERT T. SWAINE,
Of Counsel.

September 30, 1944.

BRIEF IN SUPPORT OF PETITION

1. The present case is not within the mischief aimed at by § 42.

As pointed out in *Enright's* case, 312 U. S. at p. 639, § 42 was designed to cure the avoidance of tax which resulted from decisions, of which *Nichols* v. *United States* 64 Ct. Cls. 241 provided an example, in which income accrued during the lifetime of a decedent who was on a cash basis was held not to be income either to him or to his estate. This would be particularly applicable to earnings, as earnings necessarily represent the reward of labor by the decedent during his lifetime; *cf. Lucas* v. *Earl,* 281 U. S. 111. It would also be applicable to items accruing over regularly spaced periods of time, such as quarterly or annual taxes, rentals and the like; *Enright's* case, at p. 643. It would *not* be applicable to dividends on the common stock of corporations, whose declaration is entirely within the discretion of the Board of Directors and is made at irregular intervals, governed by the exercise of the directors' judgment as to the condition of the corporation.

Accordingly, in this case, the Commissioner has done what Congress recognized that he could not do in the type of case for which § 42 was provided. He has assessed the Estate. He has himself thus ruled that the income did accrue from the dividend to the estate after the death. This assessment is not disputed by the Executor.[4]

2. Determination of when a dividend accrues for the purposes of § 42 is a question of federal law and not of state law.

Both the majority and dissenting Judges of the court below, and both the Commissioner and the taxpayer in the

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[4]For the convenience of the Court, those portions of the Congressional Committee reports dealing with §42 of the Revenue Act of 1934 (the same as §42 of the Revenue Act of 1938) are included as an Appendix to this brief.

court below, agreed that this is a question of Federal law. Against this four-fold unanimity may be placed the decision of the Tax Court that State law governs, that is to say, that there is to be a different rule in each State, depending upon the place of incorporation of the dividend-paying companies. Five members of the Tax Court dissented; but they did not state upon what ground—whether because they considered that the question was one of Federal law, or because they disagreed as to one or another of the particular State laws.

Four states were involved—New Jersey, Delaware, Pennsylvania and Maine. After a painstaking effort to determine upon what date those states considered that a dividend became a debt, the majority of the Tax Court held that the dividends of the New Jersey corporation should have been included in the decedent's income, but that the dividends of the Delaware, Pennsylvania and Maine corporations were income to the estate.

The Tax Court's independent view had appeared in the decision in the *McGlue* case, 41 B. T. A. 1186, the relevant portion of which follows (pp. 1193-4):

> "The remaining question is whether the dividend on the Bourjois, Inc., stock, which was declared 'during the week of October 19, 1935' and was payable on November 15, 1935, to the stockholders of record on November 1, 1935, had accrued at the date of decedent's death, October 31, 1935, and is therefore includable in decedent's gross estate under section 42 above. We think not. Although the facts are somewhat lacking, we assume that at the time of his death the decedent was the owner of a sufficient number of the shares of stock in question to entitle him to the amount with which he is charged as a

> dividend accrued at that time. It is to be noted, however, that the dividend, although declared prior to decedent's death and 'during the week of October 19, 1935', was not payable to the stockholders of record at the time of the declaration, but to those who might be the stockholders of record on November 1, 1935. If by his will McGlue had specifically bequeathed the shares the legatee would have received and been taxable upon the dividend payable November 15, 1935. Until the latter date there was no certainty who would be the stockholders of record on November 1, 1935, and therefore would be entitled to receive the dividend. See *Sharp* v. *Commissioner*, 91 Fed. (2d) 802. Cf. *William K. Vanderbilt et al., Executors*, 11 B. T. A. 291. This uncertainty of the decedent's right at the time of his death, October 31, 1935, ever to receive the dividend was sufficient, we think, to defeat the accrual of the dividend on that date. In other words, at the time of decedent's death the right to receive the dividend on the Bourjois, Inc., stock had not become fixed. *Spring City Foundry Co.* v. *Commissioner, supra.* [292 U. S. 182]
>
> "Reviewed by the Board."

The Tax Court changed its view in this case because it felt constrained to do so by the fact that the 4th Circuit Court of Appeals had so held (wrongly, as we all think) in reversing the decision in *McGlue's* case, 119 F. (2d) 167. We appreciate that this Court needs no help from counsel on the question of applicability of a single Federal rule to an income tax question so broad as this,—when may a dividend be held to have been made to, and accrued to, a stockholder for purposes of §42. *Lyeth* v. *Hoey*, 305 U. S. 188.

3. The issue, as stated in the opinion of Judge Learned Hand (dissenting below), is whether there can be income to a party never entitled to receive it.

The seed of the error below lies in the lawyer's instinct to apply, without analysis, the rule of thumb that a dividend becomes a debt when declared. We all learned this rule at Law School; but it is unrealistic under modern conditions, having regard to the practice of dividend-declaration by corporations whose shares are widely held by the public. It is the universal practice of such corporations,—and, indeed, is a practice required by the rules of the principal Stock Exchanges,—to keep stock transfer books, and when dividends or other corporate distributions are declared, to set a future date upon which either the stock transfer books are to be closed or the names of holders of record are to be taken as determinative of the stockholders entitled to receive the dividend.

The question has frequently arisen under local law whether the party entitled to the dividend was the stockholder on the day of declaration, the record date or the day of payment. The great weight of authority in the State Courts is in favor of the record date rule; but there has been some conflict. It was with the decisions on this subject in the various States that the Tax Court was wrestling in this case. And the curious feature of the decision of the Circuit Court of Appeals in this case is that, although it definitely overruled the Tax Court on the question as to whether such State law was applicable, it made no effort to analyze what a proper Federal rule should be as to this new and all-important question, but simply accepted as controlling authority still earlier decisions which also went upon the ground that State law governed.

What we argued below, and what Judge Learned Hand has pointed out in his dissenting opinion, is that under the modern record date practice there is no stockholder who can make a claim to be entitled to a dividend upon the ground that he held the stock on the mere date of declaration. Judge Learned Hand said:

> "The confusion lies in the fact of treating the certainty that there is a debt as a certainty of the identity of the creditor."

Each one of the eight corporations in this case had declared a dividend and would owe a debt; but until the record date it was not known to whom the debt would be due and payable,—who would realize income from it,—to whom such income would accrue.

Judge Learned Hand further pointed out the distinction between the question in the present case and the question in the *Enright* case, *supra*, 312 U. S. 636:

> "* * * it is one thing to hold that one should compute the present value of all the items of unfinished work on a lawyer's books, even though there is a chance of error in doing so because some of the charges are contingent; they have a present value, which ordinarily can be approximately computed. But it is quite another thing, when the very obligee of a claim remains undetermined, arbitrarily to select one of the two or more possible persons who may become the obligee, and say that one will treat him as the owner of the claim."

4. Failure to review this case may leave in effect an unfortunate misinterpretation of the Court's opinion in *Helvering* v. *Enright*, 312 U. S. 636.

A paragraph of this Court's opinion in the *Enright* case, at pages 644-645, has been supposed by the Court

below to justify it in not giving an independent analysis of the dividend question on the merits. The paragraph in question, 312 U. S. at 644-645, concluded:

> "Accruals here are to be construed in furtherance of the intent of Congress to cover into income the assets of decedents, *earned* during their life and unreported as income, which on a cash return, would appear in the estate returns. *Congress sought a fair reflection of income.*" (Italics ours.)

This Court further stated, (at p. 642) that the question was whether the earnings in that case constituted "an accrual of income" and concluded that they were taxable *because* they were "properly" accrued. This constituted a decision, in conformity to the statute, that the question is in each type of case whether income has in fact *properly* "accrued".

The opinion further pointed out "That the meaning to be attributed to 'accrued' as used in §42 is to be gathered from its surroundings" (at p. 644). The appropriate "surroundings" in the present case may be found in §115 of the Revenue Act of 1938; and §115 provides the definition, in terms applicable throughout the Act, of a "dividend" as a corporate distribution when "made". Thus, the question under §42 becomes: When was the dividend made to the taxpayer?

We understand that the true construction of this Court's position in the *Enright* case is to be found in its holding at page 643 that (1) "accrued" had *not* become a "word of art" under the Income Tax Act, and therefore that (2) its meaning under § 42 was open to objective interpretation in each case, unfettered by reference to broader interpretations under other sections, specifically (in that case) under

§ 48 of the Revenue Act of 1934. We understand that this Court was merely disclaiming any slavish adherence to the formula of statutory interpretation that a given word must always have the precisely same meaning wherever it appears in a statute, regardless of its context. We are further confident that this Court did not mean to be understood as saying that the desirability of raising revenue from decedents in itself creates a rule of interpretation, carrying as a consequence that income is to be imputed to decedents under § 42 which would not under other sections be income at all.

The critical question remains: When may a corporate dividend be held to have "*properly* accrued"? The learned Court below was in error in supposing that this Court intended in the *Enright* case to dispense with the duty of construing the governing word employed by Congress—"accrue".

This case is different in all vital respects from *Enright's* case:

(1) As to the factual basis of the cases: whereas earnings may fairly be said to have necessarily accrued during the lifetime of the individual who earned them, no such consideration applies to dividends.

(2) As to the theory of statutory interpretation: whereas there was no other section of statute providing material aid to the interpretation of the word "earnings", Section 115(a) does require to be considered where dividends are involved.

(3) As to the practical results: whereas a decision adverse to the Government in *Enright's* case would have meant that no income tax was payable, as it was under-

stood that the earnings could not in any event be income to the Estate, there was in this case an assessment of the same income to the Estate itself.

The assessment to the Estate has added significance, in that it reflects the doubt of the Commissioner himself that the income had truly "accrued" before the death, even under a "broad" interpretation of the word.

5. None of the prior decisions of circuit courts of appeal has really considered the question.

In *Bach* v. *Rothensies*, 124 F. (2d) 306 (C. C. A. 3), cert. den. 316 U. S. 666, the question was not presented, although it might have been. In the opinions both in the District Court (at 37 Fed. Supp. 217) and in the Circuit Court of Appeals, as well as in the petition for certiorari, it was *assumed* that the income, represented by the dividends, had accrued at the date of death,[5] and there was therefore no ground upon which to justify the issuance of a

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[5]The question was thus presented by the petition for writ of certiorari in the *Bach* case, Oct. Term 1941, No. 1019, Petition at p. 5:

> "Where a taxpayer is a life beneficiary of a spendthrift trust, and where such beneficiary taxpayer and such trust keep their resepective books and file their respective income tax returns on the cash basis, does Section 42 of the Revenue Act of 1934, despite the provisions of Sections 162(b) and 164 of that Act to the contrary, upon the death of such beneficiary taxpayer, require the inclusion in his life period income tax return (as "amounts accrued up to the date of his death") of *income accrued* on property of the trust at the date of his death, which was not due to the trust or distributable by it to such beneficiary or his estate until actually collected in subsequent years by the trust? (Italics ours.)

writ of certiorari unless this Court had wished to entertain the argument, advanced in that case, that § 42 was unconstitutional.

We, of course, recognize § 42 to be constitutional. The immediate question presented in this case, *and which has not been presented in any prior case*, is whether when this Court said in the *Enright* opinion (at p. 645) that "Congress sought a fair reflection of income", it intended the courts below to understand that income might be reflected back into the hands of a decedent even in a case in which, at the time of death, there had not yet accrued any right in him to receive it.

Although the Court below recognized that the question should be one of Federal Law, it cited as if they were authority the decisions of two Circuit Courts of Appeals which had determined the question upon the theory that it was governed by State law. *Helvering* v. *McGlue's Estate*, 119 F. (2d) 167 (C. C. A. 4); *Commissioner* v. *Cohen*, 121 F. (2d) 348 (C. C. A. 5).

In neither case was a writ of certiorari sought.

In *McGlue's* case, the 4th Circuit Court of Appeals simply held that State law governed, and the State there involved being New York, construed the New York cases as requiring application of the minority rule in favor of the declaration date.[6] The 4th Circuit was followed by the 5th Circuit, without apparently any independent consideration at all, in *Commissioner* v. *Cohen*, 121 F. (2d) 348. Now, finally, even the 2nd Circuit, which has discerned that the whole basis of these earlier decisions was an un-

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[6]The New York law is in fact in considerable doubt; and Surrogate Foley has expressly held that the record date governs. *Matter of Bashford*, 178 Misc. 951, 36 N. Y. Supp. (2d) 651.

sound one, has considered itself nonetheless bound to follow them in the result.

We respectfully submit that this case really is an extraordinary one, meriting review, in that we here find both the majority of the Second Circuit Court of Appeals and the Commissioner of Internal Revenue relying upon decisions as authoritative, which (as they recognize) were based upon a wholly unsound theory of law.

We are, of course, compelled frankly to concede that the results in those cases were adverse to the taxpayers. But surely, if there ever be a case in which the principle of *cessat ratio cessat ipsa lex* should have application, it is a case in which the now defunct *rationes* were not merely erroneous, but were so because they were based upon consideration of entirely different systems of law (State instead of Federal).[7]

The unfortunate effect of such a defeatist administration of law as is represented by the acceptance of admittedly unsound opinions is aptly illustrated by the present case. The effect upon the Tax Court is worthy of special note. The unfortunate Tax Court had started right by applying a single general rule of law (and as we think, the correct record date rule) to *McGlue's* Estate. It was then put wrong by the 4th Circuit Court of Appeals, which applied the State law heresy. Then, in the present case, the Tax Court accepted the reproof and applied State law. In doing so, it was constrained painstakingly to analyze the laws of four different States. Having done so, it was again reversed by a different Circuit Court of Appeals

[7] And at that only New York State law, which has always been recognized as applying only a minority rule, and which itself may now be different; footnote 6, *supra*.

(the 2nd); yet in an opinion in which the 2nd Circuit Court of Appeals cited as authoritative the decisions of the other Circuit Courts of Appeals whose authority it now said that it had been error for the Tax Court to have accepted.

In the light of this history, we most respectfully submit to the consideration of this Court whether, if it were to deny this writ, it would not be leaving the law in an unsatisfactory condition. We suggest that in justice to the Tax Court (if not to this taxpayer), it would be fit and proper for this Court now to take jurisdiction and to straighten out the important question of law which has been thus confused and distorted by the unfortunate cross-current of decisions to date.

6. The decision below is indistinguishable in principle from that of the Third Circuit Court of Appeals in the *Tar Products* case: and there is, therefore, a direct conflict, meriting review.

In the *Tar Products* case in 130 F. (2d), the 3rd Circuit Court of Appeals was directly presented with the question when, as a matter of Federal Income Tax Law, a dividend is made and accrues to a taxpayer. It held that even in the case of a taxpayer on the accrual basis, the ultimate payment date governs. The Court below has suggested that there is no conflict, on the theory that the *Tar Products* case was decided under §115-(a), but that this Court held in the *Enright* case that §115-(a) is of no moment in a §42 case. But this Court could not have so held, for §115-(a) was not involved or mentioned in the *Enright* case.

The only way that a conflict of circuits could be avoided would be to sanction the co-existence of rules (1) that a

dividend accrues as soon as it is declared, in the case of all stockholders who thereafter die, but (2) does not accrue to other stockholders until it is paid. It would follow that if a stockholder dies and his estate thereafter sells the shares before the payment date, two parties will be taxable for the same dividend,—the decedent, because he was a stockholder at the date of declaration, and the vendee, because he was a stockholder at the payment date.

This is not a far-fetched thought, for it is common practice for months to elapse between the declaration and payment of dividends. Thus, in the present case, approximately three months elapsed between the declaration and payment dates of the dividends of American Smelting & Refining Company and General Motors Corporation, and almost 12 months elapsed between the declaration date and payment date of one of the dividends of Westinghouse Air Brake Manufacturing Company.

If the Income Tax Law is to be held to compel imposition of tax upon two individuals for the same dividend, we respectfully submit that a construction so remarkable should at least be settled as the result only of a decision of this Court.

Respectfully submitted,

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September 30, 1944.

APPENDIX

Excerpts from Congressional Committee Reports re Section 42 of the Revenue Act of 1934

"Sections 42 and 43 of the Revenue Act of 1932 define the period in which items of income and of deduction shall be included.

"Your subcommittee recommends adding to the first of these sections a provision requiring the income-tax return of a decedent to include amounts of income accrued up to the date of his death, regardless of the fact that he may have kept his books on the cash basis. In the case of the second of these sections, a provision should be added allowing deductions to be likewise accrued.

"Since the courts have held that income accrued by a decedent prior to his death is not income to the estate, it follows that unless such income is taxable to the decedent it will escape income tax altogether. For the same reason, unless expenses which accrued prior to death are allowed to the decedent, they cannot be used. The recommendation made by the subcommittee remedies these defects." [Preliminary report of a subcommittee of the Committee on Ways and Means, 73rd Congress, 2nd Session, p. 15.]

"Sections 42 and 43. Income accrued and accrued deductions of decedents: The courts have held that income accrued by a decedent on the cash basis prior to his death is not income to the estate, and under the present law, unless such income is taxable to the decedent, it escapes income tax altogether. By the same reasoning, expenses accrued prior to death cannot be deducted by the estate. Section 42 has been drawn to require the inclusion in the income of a decedent of all amounts accrued up to the date of his death regardless of the fact that he may have kept his books on a cash basis. Section 43 has also been changed so that expenses accrued prior to the death of the decedent may be deducted." [Report No. 704 of the Committee on Ways and Means, 73rd Congress, 2nd Session, p. 24. Substantially the same language is used in the Report of the Senate Finance Committee, Report 558, p. 28.]